



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2023-12
**The Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj,
Isni Kilaj, Fadil Fazliu and Hajredin Kuçi**

Before: Pre-Trial Judge
Judge Marjorie Masselot

Registrar: Fidelma Donlon

Date: 18 August 2025

Language: English

Classification: Public

Public Redacted Version of

**Decision on the Thaçi Defence Request for Certification to Appeal the
“Decision on Specialist Prosecutor’s Request for Modification of Hashim
Thaçi’s detention conditions”**

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 45(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rules 77 and 82(5) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules") hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 20 May 2025, the Specialist Prosecutor's Office ("SPO") submitted a request to impose restrictions on Hashim Thaçi's ("Mr Thaçi" or "Accused") non-privileged visits during his detention at the Detention Facilities of the Specialist Chambers ("SC"), namely, to prohibit: (i) a number of individuals from visiting him; and (ii) any discussions related to the present case (KSC-BC-2023-12) ("Case 12") and the case of *The Specialist Prosecutor v. Hashim Thaçi et al.* (KSC-BC-2020-06) ("Case 06") ("SPO Request").²

2. On 18 July 2025, the Pre-Trial Judge issued her "Decision on Specialist Prosecutor's Request for Modification of Hashim Thaçi's detention conditions", granting in part the SPO Request ("Impugned Decision").³ As such, the Pre-Trial Judge, *inter alia*, prohibited non-privileged visits to Mr Thaçi at the SC Detention Facilities from: Artan Behrami ("Mr Behrami"), Blerim Shala ("Mr Shala"), Ismail Syla ("Mr Syla"), Vllaznim Kryeziu ("Mr Kryeziu"), [REDACTED], [REDACTED], Milaim Ahmetaj, Milaim Cakiqi, Avni Kastrati, and [REDACTED] (collectively, "Concerned Visitors") ("Prohibition on Visits").⁴

¹ KSC-BC-2023-12, F00015, President, [Decision Assigning a Pre-Trial Judge](#), 6 June 2024, public.

² KSC-BC-2023-12, F00308, Specialist Prosecutor, *Prosecution Request to Modify Detention Conditions*, 20 May 2025, confidential, with Annex 1, confidential. A public redacted version of the main filing was filed on 22 July 2025, F00308/RED.

³ KSC-BC-2023-12, F00382/COR, Pre-Trial Judge, *Corrected Version of Decision on Specialist Prosecutor's Request for Modification of Hashim Thaçi's detention conditions*, 18 July 2025, confidential. A public redacted version was filed on 18 August 2025, F00382/COR/RED.

⁴ Impugned Decision, paras 32, 42, 49(a).

3. On 28 July 2025, the Defence for Mr Thaçi ("Thaçi Defence") filed an application requesting leave to appeal the Impugned Decision ("Application").⁵
4. On 5 August 2025, the SPO responded to the Application, submitting that it should be denied ("Response").⁶
5. On 11 August 2025, the Thaçi Defence replied to the Response, maintaining its Application ("Reply").⁷

II. SUBMISSIONS

A. APPLICATION

6. The Thaçi Defence requests the Pre-Trial Judge to grant certification to appeal the Impugned Decision with respect to the following three issues:
 - (a) Whether the Pre-Trial Judge erred in law by ruling that Mr Thaçi is subject to two distinct detention regimes which operate independently of each other ("First Issue");
 - (b) Whether the Pre-Trial Judge erred by failing to individually assess the level of risk posed by each of the "Concerned Visitors" ("Second Issue"); and

⁵ KSC-BC-2023-12, F00396, Thaçi Defence, *Thaçi Defence Request for Certification to Appeal "Decision on Specialist Prosecutor's Request for Modification of Hashim Thaçi's detention conditions"*, 28 July 2025, confidential and *ex parte*. A confidential redacted version was filed on the same day, F00396/CONF/RED.

⁶ KSC-BC-2023-12, F00409, Specialist Prosecutor, *Prosecution Response to "Thaçi Defence Request for Certification to Appeal 'Decision on Specialist Prosecutor's Request for Modification of Hashim Thaçi's detention conditions'"*, 5 August 2025, confidential and *ex parte*. A confidential redacted version was filed on the same day, F00409/CONF/RED.

⁷ KSC-BC-2023-12, F00412, Thaçi Defence, *Thaçi Defence Reply to SPO Response to Request for Certification to Appeal "Decision on Specialist Prosecutor's Request for Modification of Hashim Thaçi's detention conditions"*, 11 August 2025, confidential.

(c) Whether the Pre-Trial Judge erred in failing to consider or explain why less extreme measures – such as “the conditions adopted in Case 06” (“Case 06 Conditions”) – would not suffice (“Third Issue” and collectively, “Three Issues”).⁸

7. Under the First Issue, the Thaçi Defence maintains that, in the Impugned Decision, the Pre-Trial Judge erroneously rejected its argument that, in the absence of new facts, the detention conditions ordered by Trial Panel II in its decision of 1 December 2023 cannot be altered by the Pre-Trial Judge (“Case 06 F01977 Decision”). According to the Thaçi Defence, the Pre-Trial Judge’s ruling repeats an error as regards the application of the principle of *res judicata*, now in the context of detention. The Thaçi Defence further argues that the approach of the Pre-Trial Judge is also flawed because a single detainee cannot be subject to two concurrent regimes of detention, since – unless they are identical – the regimes will always conflict.⁹

8. Under the Second Issue, the Thaçi Defence claims that the Pre-Trial Judge’s determination that all of the Concerned Visitors pose a “risk of obstruction” is flawed because it is based on an insufficient individual analysis. More specifically, the Thaçi Defence avers that the Pre-Trial Judge appears to have operated on a presumption that if there is any allegation of Mr Thaçi having made an improper disclosure to a visitor – no matter whether minor or inadvertent, and regardless of the response from the visitor in question – there exists a “risk of obstruction” which justifies a visitation ban for that person.¹⁰

⁸ Application, paras 1-2, 25.

⁹ Application, paras 6-8; referring to KSC-BC-2020-06, F01977, Trial Panel II, [Further Decision on the Prosecution’s Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi](#), 1 December 2023, public.

¹⁰ Application, paras 9-13.

9. Under the Third Issue, the Thaçi Defence contends that the Impugned Decision fails to reflect the principle of necessity and proportionality, because it lacks a reasoned explanation as to why the conditions that have been in place in the context of Case 06 for over 18 months are insufficient to address the identified risk of obstruction.¹¹

10. The Thaçi Defence further asserts that the fairness of the proceedings would be significantly affected if the Three Issues are wrongly decided in the Impugned Decision and Mr Thaçi's rights, as guaranteed by Article 8 of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR"), are adversely affected for the duration of the proceedings by conditions of detention imposed through errors of law.¹² Lastly, the Thaçi Defence takes the view that immediate appellate resolution of the Three Issues would materially advance the proceedings since it would obviate the likelihood of their continued litigation in the context of the periodic review done by the Pre-Trial Judge.¹³

B. RESPONSE

11. The SPO responds that the Three Issues fail to meet the criteria for certification.¹⁴ With regards to the First Issue, the SPO contends that the Thaçi Defence merely disagrees with the Impugned Decision and belatedly seeks to challenge the legal framework applicable to detention.¹⁵

12. With regard to the Second Issue, the SPO argues that the Thaçi Defence misrepresents the Impugned Decision since the Impugned Decision does contain findings on the risks posed by the Concerned Individuals.¹⁶ The SPO

¹¹ Application, paras 14-18.

¹² Application, paras 21, 24. *See also* paras 19-20.

¹³ Application, paras 22-24.

¹⁴ Response, paras 1, 4, 7, 10-11, 18.

¹⁵ Response, paras 2-3.

¹⁶ Response, para. 5.

adds that, in any event, an assessment of the risk of each individual visitor is not required by the Law or the Rules, nor the case law cited by the Thaçi Defence. Rather, according to the SPO, the Pre-Trial Judge properly evaluated whether Mr Thaçi presented risks warranting restrictions on his communications and visitation.¹⁷

13. With regards to the Third Issue, the SPO submits that the Thaçi Defence once again misrepresents the Impugned Decision and expresses disagreement with the findings therein, since said Decision provides clear, comprehensive, and unambiguous reasoning explaining the conclusion that the visit restrictions imposed are necessary and proportionate.¹⁸

14. With regards to the Three Issues, the SPO maintains that the Thaçi Defence fails to show that certification would materially advance the proceedings or that the Impugned Decision affects the fair and expeditious conduct of the proceedings in a manner that requires immediate appellate intervention.¹⁹

C. REPLY

15. The Thaçi Defence replies that, in its Response, the SPO: (i) advances arguments on the merits of the Thaçi Defence's position which are irrelevant to the requirements of certification; or (ii) assumes legal principles for which no authority is provided.²⁰

III. APPLICABLE LAW

16. Pursuant to Article 45(2) of the Law, a Court of Appeals Panel shall hear interlocutory appeals from an accused or from the SPO in accordance with the

¹⁷ Response, para. 6.

¹⁸ Response, para. 8.

¹⁹ Response, para. 16.

²⁰ Reply, para. 3. *See also* Reply, paras 4-8.

Law and the Rules. Interlocutory appeals, other than those that lie as of right, must be granted leave to appeal through certification by the Pre-Trial Judge or Trial Panel on the basis that they involve an issue which would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial and for which, in the opinion of the Pre-Trial Judge or Trial Panel, an immediate resolution by a Court of Appeals Panel may materially advance the proceedings.

17. Pursuant to Rule 77(2) of the Rules, the Panel shall grant certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, including, where appropriate remedies could not effectively be granted after the close of the case at trial, and for which an immediate resolution by the Court of Appeals Panel may materially advance the proceedings.

18. Pursuant to Rule 82(5) of the Rules, where the basis for the classification no longer exists, whoever submitted the original filing shall apply to the Panel for reclassification. A Panel may also reclassify a filing upon request by any other participant or *proprio motu*.

IV. DISCUSSION

A. LEGAL TEST

19. A right to appeal arises only if the Panel is of the opinion that the standard for certification set forth in Article 45(2) of the Law and Rule 77(2) of the Rules

has been met.²¹ The Pre-Trial Judge recalls the interpretation of these provisions as set out previously in the present proceedings.²²

20. Mindful of the restrictive nature of this remedy, the following specific requirements apply:

- (1) Whether the matter is an “appealable issue”;
- (2) Whether the issue at hand would significantly affect:
 - i. The fair and expeditious conduct of the proceedings, or
 - ii. The outcome of the trial; and
- (3) Whether, in the opinion of the Pre-Trial Judge, an immediate resolution by the Court of Appeals Panel may materially advance the proceedings.²³

B. THE APPLICATION

1. **First Issue: Whether the Pre-Trial Judge erred in law by ruling that Mr Thaçi is subject to two distinct detention regimes which operate independently of each other**

21. The Pre-Trial Judge finds, for the reasons that follow, that the First Issue does not constitute an appealable issue within the meaning of Article 45(2) of the Law and Rule 77(2) of the Rules, as the Thaçi Defence simply disagrees with the Pre-Trial Judge’s findings.

²¹ KSC-BC-2023-12, F00149, Pre-Trial Judge, [Decision on Specialist Prosecutor’s Request for Leave to Appeal the “Decision on the Confirmation of the Indictment”](#) (“30 January 2025 Decision”), 30 January 2025, public, para. 15; F00283, Pre-Trial Judge, [Decision on Smakaj Application for Leave to Appeal Decision F00247](#), 6 May 2025, public, para. 20. See also, KSC-BC-2020-06, F00172, Pre-Trial Judge, [Decision on the Thaçi Defence Request for Leave to Appeal](#), 11 January 2021, public, para. 9.

²² [30 January 2025 Decision](#), paras 15-22, with further references.

²³ [30 January 2025 Decision](#), para. 16, with further references.

22. The Pre-Trial Judge notes that the Thaçi Defence's submissions in support of the First Issue proceed along two lines, first, invoking the principle of *res judicata* and, second, alluding to implementation issues where two concurrent regimes of detention are not identical.²⁴

23. The Pre-Trial Judge recalls at the outset that, in the Impugned Decision, she held that: (i) Mr Thaçi's conditions of detention are assessed in the context of the Case 12 proceedings independently from the detention regime imposed pursuant to the Case 06 F01977 Decision; and (ii) as the detention regime in place in Case 06, pursuant to decisions by Trial Panel II, does not fall within her competence, she is not in a position to assess compliance or infringement of the restrictions imposed therein.²⁵ This, the Pre-Trial Judge notes, is in line with the applicable legal framework and the practice to date, whereby, following her initial decision on detention,²⁶ she periodically reviews the necessity of the detention of Mr Thaçi²⁷ and rules on compassionate release requests *in the context of Case 12* and independently from Case 06.²⁸

24. The Pre-Trial Judge notes that the Thaçi Defence merely restates its submissions advanced in its response to the SPO Request,²⁹ offering no further

²⁴ See *supra* para. 7.

²⁵ Impugned Decision, paras 17-18.

²⁶ KSC-BC-2023-12, F00037, Pre-Trial Judge, *Decision on Request for Arrest Warrants and Related Matters*, 29 November 2024, confidential, with Annexes 1-8, strictly confidential and *ex parte*; see Annex 4, containing the arrest warrant against Mr Thaçi. A public redacted version of the main filing was issued on 19 December 2024, [F00037/RED](#); Transcript of Hearing, *Initial Appearance of Hashim Thaçi*, 8 December 2024, public, p. 18, lines 10-20.

²⁷ See for instance KSC-BC-2023-12, F00405, Pre-Trial Judge, [Fourth Decision on Review of Detention of Hashim Thaçi](#), 5 August 2025, public.

²⁸ See for instance KSC-BC-2023-12, F00230/COR/RED, Pre-Trial Judge, *Public Redacted Version of 'Corrected Version of Decision on Urgent Thaçi Defence Request for Temporary Release on Compassionate Grounds'*, 19 March 2025 (corrected version filed on 20 March 2025 and public redacted version filed on 14 April 2025), public.

²⁹ See KSC-BC-2023-12, F00320, Thaçi Defence, *Thaçi Defence Response to Prosecution Request to Modify Detention Conditions (F00308)*, 30 May 2025, confidential, paras 13-15. A public redacted version was filed on 24 July 2025, F00320/RED.

substantiation to indicate an error by the Pre-Trial Judge, beyond stating that “[her] ruling repeats an error regarding *res judicata* on which leave to appeal has already been granted regarding other decisions”.³⁰ The Pre-Trial Judge underlines in this regard that, while the actual merits of the appeal are not a consideration at the certification stage, the mere articulation that the Pre-Trial Judge erred cannot form the basis of an appealable issue without further substantiation.³¹

25. The Pre-Trial Judge also finds that the submission that a single detainee cannot be subject to two concurrent regimes of detention due to potential incompatibilities or conflicts³² does not substantiate an error in her reasoning, as this concerns the implementation of decisions on the conditions of detention. Matters of implementation are irrelevant to the question of whether the Pre-Trial Judge has the power to impose a separate detention regime in Case 12, independent of the one in Case 06, which is the actual issue raised by the Taçi Defence. Matters of implementation fall within the remit of the Registrar,³³ who may, if unable to resolve a matter arising in this context, refer it to the relevant Panel(s).

26. For these reasons, the Pre-Trial Judge rejects leave to appeal the First Issue.

2. Second Issue: Whether the Pre-Trial Judge erred by failing to individually assess the level of risk posed by each of the “Concerned Visitors”

27. The Pre-Trial Judge finds, for the reasons that follow, that the Second Issue does not constitute an appealable issue within the meaning of Article 45(2) of the

³⁰ Application, para. 8.

³¹ KSC-BC-2023-10, F00347, Pre-Trial Judge, [Decision on Request for Leave to Appeal F00294](#), 24 June 2024, public, para. 26.

³² See *supra* para. 7.

³³ See Article 34(12) of the Law and Rule 23(7) of the Rules.

Law and Rule 77(2) of the Rules, as the Thaçi Defence mischaracterises the Impugned Decision and/or simply disagrees with the Pre-Trial Judge's findings.

28. The Pre-Trial Judge finds that the Second Issue is premised on the misunderstanding that the risks identified in the Impugned Decision are specific to and derive solely and/or separately from each Concerned Visitor. This ignores the Pre-Trial Judge's assessment that, in the case at hand, the risks primarily arise as a result of Mr Thaçi's conduct during his non-privileged visits with *each* of the Concerned Visitors.³⁴ The Pre-Trial Judge assessed the circumstances and actions of Mr Thaçi during *each* visit with *each* of the Concerned Visitors, referring to her findings in the decision confirming the indictment against Mr Thaçi and his co-accused ("Confirmation Decision")³⁵ and analysing the transcripts of the audio-recordings of the visits at issue.³⁶ The references to the Confirmation Decision further contain specific findings as regards the conduct of certain of the Concerned Visitors, namely Mr Behrami, Mr Shala, Mr Syla, Mr Kryeziu, [REDACTED], and [REDACTED] during the visits at issue.³⁷ It is the combined effect of Mr Thaçi's actions as regards the impermissible disclosure of confidential and protected information during those visits with those particular visitors and/or the instructions provided to those particular visitors ("Alleged Incidents") which creates a risk that future

³⁴ See Impugned Decision, paras 24-26 and 28-29 and references therein.

³⁵ See KSC-BC-2023-12, F00036, Pre-Trial Judge, [Decision on the Confirmation of the Indictment](#), 29 November 2024, confidential. A public redacted version was issued on 12 February 2025, [F00036/RED](#). The Pre-Trial Judge also recalls that, on 14 April 2025, following a decision of the Court of Appeals Panel, she further confirmed vis-à-vis Mr Thaçi the mode of liability under Article 32(3) of the 2019 Kosovo Criminal Code, Law No. 06/L-074, with respect to obstructing official persons under Counts 1, 2 and 3 of the confirmed indictment of 2 December 2024 (KSC-BC-2023-12, F00260, Pre-Trial Judge, [Decision Amending the "Decision on the Confirmation of the Indictment" and Setting a Date for the Submission of Preliminary Motions](#), 14 April 2025, public).

³⁶ See Impugned Decision, paras 24-26 and footnotes 48-49.

³⁷ See Impugned Decision, para. 25 and footnotes 43-44, referring to [Confirmation Decision](#), paras 143, 183, 186-187, 195, 210-211.

such visits could result in (further) conduct incompatible with the integrity of proceedings and/or the regulations of detention. As a result, the Pre-Trial Judge found that the Alleged Incidents offered, at a minimum, credible indications that the Concerned Visitors: (i) participated in non-privileged visits at the SC Detention Facilities where Mr Thaçi engaged in the disclosure of confidential and/or protected information to third parties; and (ii) have engaged in, or could engage in, conduct incompatible with the integrity of proceedings and/or the regulations of detention.³⁸ Thus, the particular conduct of each Concerned Visitor, whether passive or active, as posited by the Thaçi Defence, is not material in the present context.

29. For these reasons, the Pre-Trial Judge rejects leave to appeal the Second Issue.

3. Third Issue: Whether the Pre-Trial Judge erred in failing to consider or explain why less extreme measures (such as the Case 06 Conditions) would not suffice

30. The Pre-Trial Judge finds, for the reasons that follow, that the Third Issue does not constitute an appealable issue within the meaning of Article 45(2) of the Law and Rule 77(2) of the Rules, as the Thaçi Defence mischaracterises the Impugned Decision and/or simply disagrees with the Pre-Trial Judge's findings.

31. The Pre-Trial Judge observes at the outset that the submissions of the Thaçi Defence as regards Trial Panel II's decisions³⁹ are misleading.⁴⁰ Be that as it may,

³⁸ Impugned Decision, para. 27.

³⁹ [Case 06 F01977 Decision](#); [REDACTED].

⁴⁰ For instance, the Thaçi Defence claims a conflict between the conclusions of the Pre-Trial Judge and Trial Panel II in the Case 06 F01977 Decision as regards the Prohibition on Visits (Application, para. 16), yet the matter addressed by the latter was materially different. Specifically, the restrictions requested by the SPO in Case 06 covered all non-privileged visits to Mr Thaçi (except those involving a list of pre-approved family members and consular officials), whereas in the present case, the SPO targeted the Concerned Visitors (*see* [Case 06 F01977 Decision](#), para. 49). [REDACTED].

the Pre-Trial Judge recalls that, contrary to the Thaçi Defence's assertion, she did assess whether the Prohibition on Visits was necessary and proportionate. More specifically, the Pre-Trial Judge found the Prohibition on Visits: (i) necessary in order to mitigate the risk of further unlawful disclosure of confidential information related to SPO (protected) witnesses; and (ii) proportionate as it is limited to individuals for whom there are, at a minimum, credible indications of (a) participation in non-privileged visits at the SC Detention Facilities where Mr Thaçi revealed confidential information related to SPO (protected) witnesses to third parties and (b) involvement in, or potential for, conduct incompatible with the integrity of proceedings and/or the regulations of detention.⁴¹ She further found the Prohibition on Visits to be proportionate to the aim pursued, namely the protection of witnesses and the integrity of proceedings, in line with Article 8(2) of the ECHR and Rule 56(6) of the Rules, while also being compatible with the rights of Mr Thaçi.⁴²

32. Furthermore, the Pre-Trial Judge finds the Thaçi Defence's submission that the Case 06 Conditions amount to "less extreme measures" speculative, since those conditions do not result in the Concerned Visitors being automatically authorised to visit Mr Thaçi. Rather, all non-privileged in-person visits are subject to the Registrar's prior approval and the Registrar is to refuse in-person visits if she determines that there are credible indications that the individual concerned has engaged or could engage in conduct incompatible with the integrity of proceedings and/or the regulations of detention.⁴³

33. For these reasons, the Pre-Trial Judge rejects leave to appeal the Third Issue.

⁴¹ See Impugned Decision, para. 32.

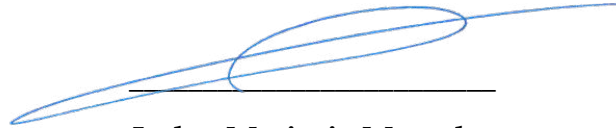
⁴² See Impugned Decision, para. 32.

⁴³ See [REDACTED]; see also [Case 06 F01977 Decision](#), paras 50-53.

V. DISPOSITION

34. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- (a) **REJECTS** the Application; and
- (b) **ORDERS** the Thaçi Defence and the SPO to file public redacted versions of their respective filings, namely the Application (F00396), the Response (F00409) and the Reply (F00412), or request their reclassification as public, by no later than **Monday, 25 August 2025**.



Judge Marjorie Masselot
Pre-Trial Judge

Dated this Monday, 18 August 2025

At The Hague, the Netherlands.